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 7 Chapter 7 Trustee

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U.S. BANKRUPTCY COURT
CLERK'S OFFICE, LAS VEGAS, NEVADA

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8 **IN THE UNITED STATES BANKRUPTCY COURT**

9 **FOR THE DISTRICT OF NEVADA**

10 In re:

11 ADAMA LAND DEVELOPMENT CORP.,

Case No. BK-S-02-12942-LBR
Chapter 7

12 Debtor.

13

 LARRY L. BERTSCH,

Adv. Case No.

14 Trustee,

15 vs.

16 BIG BEN BAR, LLC, a Nevada limited
 17 liability company; C-CUBED, a Nevada limited
 18 liability company; EXCELL, LLC, a Nevada
 19 limited liability company; GREAT
 20 AMERICAN COMMERCE, LTD., LLC, a
 21 Nevada limited liability company; QUICK
 22 CHICK, LLC, a Nevada limited liability
 23 company; TEX-MEX, LLC, a Nevada limited
 24 liability company; ENTASIS DESIGN
 25 GROUP, a Nevada business organization;
 26 HAMID PANAH, an individual; IN DOG WE
 27 TRUST, a Nevada business organization; Long
 Mountain, a Nevada business organization;
 SHOOTING STAR, a Nevada business
 organization; SILVERADO BERMUDA
 RETAIL CENTER, a Nevada business
 organization; STAR CITY, INC., a Nevada
 corporation; TV SIGN, INC., a Nevada
 corporation; DAVID NORDHEIM, an
 individual; ZOLI AHRONOVIZ, an individual;
 JOEL BASH, an individual

**COMPLAINT FOR BREACH OF
CONTRACT; RECOVERY OF LOANS;
RECOVERY OF PREFERENCE;
RECOVERY OF ASSET
FRAUDULENTLY CONVEYED;
RECOVERY OF PAYMENTS UNJUSTLY
CONFERRED**

Date of Hearing: 6-24-04
 Time of Hearing: 11:00 AM

28 Defendants.

1 Plaintiff Larry L. Bertsch, Chapter 7 Trustee of the estate of Adama Land Development Corp.,
 2 debtor in this bankruptcy case, complains and alleges as follows:

3 **A. JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over this case pursuant to 28 U.S.C. Section 1334 because this
 5 adversary proceeding constitutes a civil proceeding arising under title 11, or arising in or related to this
 6 bankruptcy case, a case under title 11.

7 2. This adversary proceeding is a core proceeding under 28 U.S.C. Section 157(b)(2)(A),
 8 (C), and (O).

9 3. Venue for this adversary proceeding is proper in this judicial district under 28 U.S.C. §
 10 1409.

11 **B. IDENTITY OF PLAINTIFF**

12 4. Adama Land Development Corp. ("Adama Development") is a Nevada corporation
 13 formed in 1996. Adama Development filed a petition for relief under the bankruptcy code and is
 14 presently the debtor in this bankruptcy case.

15 5. Plaintiff Larry L. Bertsch (the "Trustee") was originally appointed as the Chapter 11
 16 Trustee on or about May 15, 2002. Upon conversion of this bankruptcy case to a case under Chapter
 17 7, the Trustee has served as Chapter 7 Trustee for the Estate.

18 6. Adama Development was in the business of developing commercial property in Clark
 19 County, Nevada.

20 **C. ADAMA DEVELOPMENT AND THE BASH-NORDEHIM-AHRONOVIZ GROUP**

21 7. In this complaint, plaintiff refers to BIG BEN BAR, LLC, a Nevada limited liability
 22 company; C-CUBED, a Nevada limited liability company; EXCELL, LLC, a Nevada limited liability
 23 company; GREAT AMERICAN COMMERCE, LTD., LLC, a Nevada limited liability company;
 24 QUICK CHICK, LLC, a Nevada limited liability company; TEX-MEX, LLC, a Nevada limited liability
 25 company; ENTASIS DESIGN GROUP, a Nevada business organization; HAMID PANAH, an
 26 individual; IN DOG WE TRUST., a Nevada business organization; Lone Mountain, a Nevada business
 27 organization; SHOOTING STAR, a Nevada business organization; SILVERADO BERMUDA RETAIL
 28 CENTER, a Nevada business organization; STAR CITY, INC., a Nevada corporation; TV SIGN, INC.,

1 a Nevada corporation; DAVID NORDHEIM, an individual; ZOLI AHRONOVIZ, an individual; JOEL
2 BASH, an individual, collectively as the “Bash-Nordheim-Ahronoviz Group.”

3 8. The Trustee makes the collective reference for ease of pleading and anticipates that the
4 liability of one member of the Bash-Nordheim-Ahronoviz Group might differ from the liability of other
5 members of the Bash-Nordheim-Ahronoviz Group.

6 9. The Trustee is informed and believes that Adama Development formed, caused or
7 participated in the formation one, more or all members of the Bash-Nordheim-Ahronoviz Group.

8 10. The Trustee is informed and believes that Adama Development made transfers of money
9 or property one, more or all members of the Bash-Nordheim-Ahronoviz Group.

10 11. The Trustee believes that discovery in this action will reveal that Adama Development
11 made additional transfers to the Bash-Nordheim-Ahronoviz Group. The Trustee will seek leave of court
12 to add such additional transfers to the Bash-Nordheim-Ahronoviz Group as information about such
13 transfers is discovered.

FIRST CLAIM FOR RELIEF

(Breach of Contract against the Bash-Nordheim-Ahronoviz Group)

16 12. The Trustee incorporates into this First Claim for Relief paragraphs 1 through 11 of this
17 Complaint as if fully set forth.

18 13. The Bash-Nordheim-Ahronoviz Group and Adama Development entered into a contract
19 by which Adama Development agreed to advance funds for the operations of the Bash-Nordheim-
20 Ahronoviz Group and which the Bash-Nordheim-Ahronoviz Group agreed to repay within a reasonable
21 time.

22 14. Between January 1998 and January 2003 Adama Development advanced in excess of
23 \$75,000 to the Bash-Nordheim-Ahronoviz Group.

24 15. The Bash-Nordheim-Ahronovitz Group has not repaid any part of the funds advanced by
25 Adama Development.

26 16. By failing to repay the advances to Adama Development, the Bash-Nordhcim-Ahronoviz
27 Group breached its contract with Adama Development.

28 17. Adama Development has been damaged by the Bash-Nordheim-Ahronoviz Group's

breach of contract.

18. The Trustee has retained the services of counsel to bring and maintain this adversary proceedings, and under the Adama Governing Documents, and otherwise, is entitled to recover his fees and costs for bringing and maintaining this action.

SECOND CLAIM FOR RELIEF

(Money Lent to the Bash-Nordheim-Ahronoviz Group against the Bash-Nordheim-Ahronoviz Group)

19. The Trustee incorporates into this Second Claim for Relief paragraphs 1 through 11 of this Complaint as if fully set forth.

20. Between January 1998 and January 2003 Adama Development loaned in excess of \$75,000 to the Bash-Nordheim-Ahronoviz Group.

21. The Bash-Nordheim-Ahronoviz Group has not repaid any part of the loans from Adama Development.

22. Adama Development has been damaged by the Bash-Nordheim-Ahronoviz Group's failure to repay the loans.

23. The Trustee has retained the services of counsel to bring and maintain this adversary proceedings, and under the Adama Governing Documents, and otherwise, is entitled to recover his fees and costs for bringing and maintaining this action.

THIRD CLAIM FOR RELIEF

(Recovery of Preferences from the Bash-Nordheim-Ahronoviz Group)

(11 U.S.C. § 547(b))

24. The Trustee incorporates into this Third Claim for Relief paragraphs 1 through 11 of this Complaint as if fully set forth.

24 25. The Trustee is informed and believes that Adama Development made certain of the
25 transfers of money or property to the Bash-Nordheim-Ahronoviz Group within one year before the date
26 of the filing of the petition commencing this case.

27 26. The Trustee is informed and believes that the transfers of money or property to the Bash-
28 Nordheim-Ahronovitz Group was made for or on account of an antecedent debt owed by the Adama

Development.

27. The Trustee is informed and believes that the transfers of money or property to the Bash-Nordheim-Ahronovitz Group was made while Adama Development was insolvent.

28. The Trustee is informed and believes that the transfers of money or property to The Bash-Nordheim-Ahronoviz Group caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of the receivables that Adama Development might have made available to creditors and interest holders.

29. The Trustee is informed and believes that the transfers of money or property to the Bash-Nordheim-Ahronoviz Group will enable the Bash-Nordheim-Ahronoviz Group to receive more it would receive as a creditor if the case were under chapter 7 of Title 11, the transfer had not been made, and the Bash-Nordheim-Ahronoviz Group received payment of its debts to the extent provided by the provisions of said Title 11.

30. The Trustee has retained the services of counsel to bring and maintain this adversary proceedings, and under the Adama Governing Documents, and otherwise, is entitled to recover his fees and costs for bringing and maintaining this action.

FOURTH CLAIM FOR RELIEF

(Recovery of Fraudulent Conveyance from the Bash-Nordheim-Ahronoviz Group)

(11 U.S.C. § 548)

31. The Trustee incorporates into this Fourth Claim for Relief paragraphs 1 through 11 of this Complaint as if fully set forth.

32. The Trustee is informed and believes that within one year before the filing of the petition, Adama Development transferred money or property to the Bash-Nordheim-Ahronoviz Group. To the extent that Nevada State law provides a longer period, the Trustee is informed and believes that within four years before the filing of the petition, Adama Development transferred money or property to the Bash-Nordheim-Ahronoviz Group.

33. The Trustee is informed and believes that the transfer of money or property to the Bash-Nordheim-Ahronoviz Group was made with actual intent to hinder, delay or defraud any entity to which Adama Development was or became indebted on or after the date such transfer occurred.

34. The Trustee is informed and believes that Adama Development received less than a reasonably equivalent value in exchange for the transfer of money or property the Bash-Nordheim-Ahronoviz Group.

35. The Trustee is informed and believes that Adama Development was insolvent on the date that the transfer of money or property to the Bash-Nordheim-Ahronoviz Group was made, or became insolvent as a result of such transfers.

36. The Trustee is informed and believes that Adama Development intended to incur, or believed that Adama Development would incur, debts that would be beyond the its ability to pay as such debts matured.

37. The Trustee has retained the services of counsel to bring and maintain this adversary proceedings, and under the Adama Governing Documents, and otherwise, is entitled to recover his fees and costs for bringing and maintaining this action.

FIFTH CLAIM FOR RELIEF

(Voidable Postpetition Transfer under 11 U.S.C. § 549 against the Bash-Nordheim-Ahronoviz Group)

38. The Trustee incorporates into this Fifth Claim for Relief paragraphs 1 through 11 of this Complaint as if fully set forth.

39. The Trustee is informed and believes that Adama Development made one or more postpetition transfers to the Bash-Nordheim-Ahronoviz Group after the commencement of the bankruptcy case, and that such transfers were not authorized under Title 11 of the United States Code.

40. The Trustee is informed and believes that the postpetition transfers to the Bash-Nordheim-Ahronoviz Group do not comply with the provisions of 11 U.S.C. § 549(c).

41. Pursuant to 11 U.S.C. § 549, the Trustee is entitled to avoid the transfers to the the Bash-Nordheim-Ahronoviz Group.

42. The Trustee has retained the services of counsel to bring and maintain this adversary proceedings, and under the Adama Governing Documents, and otherwise, is entitled to recover his fees and costs for bringing and maintaining this action.

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SIXTH CLAIM FOR RELIEF

(Unjust Enrichment for the Bash-Nordheim-Ahronoviz Group)

43. The Trustee incorporates into this Sixth Claim for Relief paragraphs 1 through 11 of this Complaint as if fully set forth.

44. The Trustee is informed and believes that the Bash-Nordheim-Ahronoviz Group claims to have been entitled to money or property from Adama Development.

45. Adama Development transferred money or property from Adama Land and various subsidiaries to the Bash-Nordheim-Ahronoviz Group.

46. Adama Land conferred a benefit upon the Bash-Nordheim-Ahronoviz Group by transferring money or property to the Bash-Nordheim-Ahronoviz Group.

47. The Trustee is informed and believes that the Bash-Nordheim-Ahronoviz Group received money or property from Adama Development and its subsidiaries and the Bash-Nordheim-Ahronoviz Group was not entitled to the transfer of money or property at the time Adama Development made said transfers.

48. Because the Bash-Nordheim-Ahronoviz Group was not entitled to the transfer of money or property from Adama Development and its subsidiaries, the Bash-Nordheim-Ahronoviz Group has been unjustly enriched to the detriment of Adama Development.

49. The Trustee has retained the services of counsel to bring and maintain this adversary proceedings, and under the Adama Governing Documents, and otherwise, is entitled to recover his fees and costs for bringing and maintaining this action.

WHEREFORE, Plaintiff Larry L. Bertsch, as Chapter 7 Trustee of the Bankruptcy Estate of Adama Land Development Corp., prays as follows, for:

1. Damages in an amount to be determined at trial for breach of contract by the liable member or members of the Bash-Nordheim-Ahronovitz Group.

2. Damages in an amount to be determined at trial for money lent to the liable member or members of the Bash-Nordheim-Abronoviz Group.

3. An order declaring that the transfer of money or property to the liable member or members of the Bash-Nordheim-Ahronovitz Group constituted a preference, and restoring the preferential

1 | transfer to Adama Development

2 4. An order restoring to Adama Development the money or property fraudulently
3 transferred by Adama Development to the liable member or members of the Bash-Nordheim-Ahronovitz
4 Group.

5 5. An order avoiding the postpetition transfers and restoring to Adama Development the
6 money or property transferred by Adama Development to the liable member or members of the Bash-
7 Nordheim-Ahronoviz Group.

8 6. An order directing defendant the liable member or members of the Bash-Nordheim-
9 Ahronoviz Group to return payments and benefits unjustly conferred to Adama Development.

10 7. Compensatory damages in an amount to be determined.

11 || 8. Reasonable attorney's fees and costs of suit.

12 9. Such other and further relief the Court may so deem to grant.

13 DATED this 19 day of March, 2004.

~~SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON~~

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*Attorneys for Plaintiff Larry L. Bertsch,
Chapter 7 Trustee*

B104 (Rev. 8/87) ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		Adversary Proceeding Number (Court Use Only)			
PLAINTIFFS LARRY L. BERTSCH		DEFENDANTS BIG BEN BAR, LLC, a Nevada limited liability company; C-CUBED, a Nevada limited liability company; EXCELL, LLC, a Nevada limited liability company; GREAT AMERICAN COMMERCE, LTD., LLC, a Nevada limited liability company; QUICK CHICK, LLC, a Nevada limited liability company; TEX-MEX, LLC, a Nevada limited liability company; ENTASIS DESIGN GROUP, a Nevada business organization; HAMID PANAH, an individual; IN DOG WE TRUST., a Nevada business organization; Lone Mountain, a Nevada business organization; SHOOTING STAR, a Nevada business organization; SILVERADO BERMUDA RETAIL CENTER, a Nevada business organization; STAR CITY, INC., a Nevada corporation; TV SIGN, INC., a Nevada corporation; DAVID NORDHRIM, an individual; ZOLI AHRONOVIZ, an individual; JOEL BASIL, an individual			
ATTORNEYS (Firm Name, Address, and Telephone No.) Anthony A. Zmaila, Esq (NBN 2319) email: azmaila@nevadafirm.com Michael F. Lynch, Esq. (NBN 8555) email: mlynch@nevadafirm.com SANTORO, DRIGGS, WALCH, KEARNY, JOHNSON & THOMPSON 400 South Fourth Street, Third Floor Las Vegas, NV 89101 (702) 791-0308 telephone/ (702) 791-1912 (facsimile)		ATTORNEYS (If Known)			
PARTY (Check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input type="checkbox"/> 2 U.S. DEFENDANT <input type="checkbox"/> 3 U.S. NOT A PARTY					
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) COMPLAINT FOR BREACH OF CONTRACT; RECOVERY OF LOANS; RECOVERY OF PREFERENCE; RECOVERY OF ASSET FRAUDULENTLY CONVEYED; RECOVERY OF PAYMENTS UNJUSTLY CONFERRED - 11 U.S.C. §§ 547(b) and 548					
NATURE OF SUIT (Check the one most appropriate box only.)					
<input checked="" type="checkbox"/> 454 To Recover Money or Property <input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property <input type="checkbox"/> 424 To object to or revoke a discharge 11 U.S.C. § 727		<input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11 or Chap. 13 Plan <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523 <input type="checkbox"/> 434 To obtain an injunction or other equitable relief <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan		<input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court <input type="checkbox"/> 498 Other (specify)	
ORIGIN OF PROCEEDINGS (Check one box only.)	<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed Proceeding	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another Bankruptcy Court	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND	NEAREST THOUSAND \$ greater than \$75,000	OTHER RELIEF SOUGHT			<input type="checkbox"/> JURY DEMAND
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES					
NAME OF DEBTOR ADAMA LAND DEVELOPMENT CORP			BANKRUPTCY CASE NO. BK-S-02-12942		
DISTRICT IN WHICH CASE IS PENDING Nevada		DIVISIONAL OFFICE Southern		NAME OF JUDGE Linda B. Riegle	
RELATED ADVERSARY PROCEEDING (IF ANY)					
PLAINTIFF N/A		DEFENDANT		ADVERSARY PROCEEDING NO.	
DISTRICT		DIVISIONAL OFFICE		NAME OF JUDGE	
FILING FEE (Check one box only)			<input checked="" type="checkbox"/> FEE ATTACHED	<input type="checkbox"/> FEE NOT REQUIRED	<input type="checkbox"/> FEE IS DEFERRED
DATE: March 19, 2004		PRINT NAME Anthony A. Zmaila		SIGNATURE OF ATTORNEY (OR PLAINTIFF)	